

EXHIBIT 59

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Washington, DC

March 27, 2008

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION,) Civil Action No
THIS DOCUMENT RELATES TO:) 01-12257-PBS
United States of America,) Judge Patti B.
ex rel. Ven-A-Care of the) Saris
Florida Keys, Inc., v.) Mag. Judge
Abbott Laboratories Inc.) Marianne Bowler
Civil Action No.) Pages 242-586
06-11337-PBS) Volume II
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(cross-captions on following pages)

Washington, D.C.

Thursday, March 27, 2008

9:40 a.m.

Videotaped deposition of DENNIS G. SMITH

Volume II

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<p>1 Q. Would you take a look at page 4 of this</p> <p>2 report, please. There is a box there that says,</p> <p>3 "Medicare payments for drugs are based on</p> <p>4 published AWP's."</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that?</p> <p>7 Now, the AWP's that Medicare uses are</p> <p>8 the same AWP's that Medicaid uses, right?</p> <p>9 A. I don't know what Medicare uses.</p> <p>10 Q. "Medicare's payment for Part B-covered</p> <p>11 drugs is based on the product's AWP which is a</p> <p>12 price assigned by the product's manufacturer and</p> <p>13 may be neither average nor wholesale."</p> <p>14 Was that your understanding of AWP in</p> <p>15 2001?</p> <p>16 MS. MARTINEZ: Objection. Form.</p> <p>17 THE WITNESS: I think we've talked a</p> <p>18 good deal about AWP and my understanding of AWP.</p> <p>19 BY MR. MERKL:</p> <p>20 Q. I would like to know, do you agree with</p> <p>21 that statement or don't you?</p> <p>22 MS. MARTINEZ: Objection. Form.</p>	<p>1 You're asking me what did I think in</p> <p>2 2001. I don't recall a specific -- if I would</p> <p>3 have characterized it in this way or a different</p> <p>4 way.</p> <p>5 BY MR. MERKL:</p> <p>6 Q. The next sentence -- it continues,</p> <p>7 "Instead the AWP is often described as a list</p> <p>8 price, sticker price, or suggested retail price."</p> <p>9 Do you agree with that today?</p> <p>10 MS. MARTINEZ: Objection. Form.</p> <p>11 THE WITNESS: I would agree that it's</p> <p>12 often described that way.</p> <p>13 BY MR. MERKL:</p> <p>14 Q. And was that your understanding in</p> <p>15 2001? If you don't remember, you're allowed to</p> <p>16 say, I don't remember.</p> <p>17 A. I don't recall what my 2001...</p> <p>18 Q. The next sentence: "The term 'AWP' is</p> <p>19 not defined in law or regulation, so the</p> <p>20 manufacturer is free to set an AWP at any level,</p> <p>21 regardless of the actual price paid by</p> <p>22 purchasers," true?</p>
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<p>1 THE WITNESS: I think this is GAO's</p> <p>2 characterization.</p> <p>3 BY MR. MERKL:</p> <p>4 Q. Do you agree with their</p> <p>5 characterization?</p> <p>6 MS. MARTINEZ: Objection. Form.</p> <p>7 THE WITNESS: Well, since they qualify</p> <p>8 it as "may," I'm not going to object to how GAO</p> <p>9 has characterized what they have said.</p> <p>10 BY MR. MERKL:</p> <p>11 Q. So you don't disagree with that</p> <p>12 statement?</p> <p>13 A. I don't disagree.</p> <p>14 Q. Did you share this view at the time, in</p> <p>15 2001?</p> <p>16 MS. MARTINEZ: Objection. Form.</p> <p>17 THE WITNESS: I think that AWP --</p> <p>18 again, as I testified in 2004, there are -- you</p> <p>19 know, there -- there's been a great deal of</p> <p>20 discussion about AWP and the extent to which it's</p> <p>21 accurate or reliable. I'm not objecting to the</p> <p>22 way this has been characterized.</p>	<p>1 MS. MARTINEZ: Objection. Form.</p> <p>2 THE WITNESS: I don't -- I would not</p> <p>3 agree that that encompasses the entirety of how</p> <p>4 AWP is relied upon by all purchasers. I think</p> <p>5 this is overly simplified. I would agree that it</p> <p>6 is not further defined in law or regulation. AWP</p> <p>7 is average wholesale price.</p> <p>8 BY MR. MERKL:</p> <p>9 Q. When you say it's not further defined,</p> <p>10 it's not defined anywhere at all, is it?</p> <p>11 MS. MARTINEZ: Objection. Form.</p> <p>12 THE WITNESS: There is no definition,</p> <p>13 precise.</p> <p>14 BY MR. MERKL:</p> <p>15 Q. And then it continues, "Manufacturers</p> <p>16 periodically report AWP's to publishers of drug</p> <p>17 pricing data" --</p> <p>18 A. Again, if I can go back, what I -- what</p> <p>19 I was referring to in saying that's I don't think</p> <p>20 how -- entirely accurate that the manufacturer is</p> <p>21 free to set any -- to set an AWP at any level.</p> <p>22 Q. Well, is there some rule that</p>

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